ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
4 October 1996 *

In Case T-197/95,

Sveriges Betodlares Centralförening, an association established under Swedish law, having its registered office in Malmö (Sweden),

and

Sven Åke Henrikson, residing in Lund (Sweden),

represented by Otfried Lieberknecht and Wolfgang Kirchhoff, Rechtsanwälte, Düsseldorf, and Michael Schütte, Rechtsanwalt, Berlin, with an address for service in Luxembourg at the Chambers of Alex Bonn, 62 Avenue Guillaume,

applicants,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and James Macdonald Flett, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

APPLICATION for the annulment, under Article 173 of the EC Treaty, of Commission Regulation (EC) No 1734/95 of 14 July 1995 fixing, for the 1994/95 marketing year, the specific agricultural conversion rate applicable to the minimum sugar beet prices and the production levy and additional levy in the sugar sector (OJ 1995 L 165, p. 12), in so far as that regulation does not fix any rate applicable to Sweden,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: H. Jung,

makes the following

Order

Legal framework and facts

1 Under the second indent of Article 137(2) of the Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, hereinafter 'the Act of Accession'), the common agricultural policy is applicable in full in the new Member States, namely the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, from 1 January 1995, the date of their accession, except where the Act of Accession provides otherwise. Article 149 of the Act of Accession provides that if transitional

measures are necessary, in the sugar sector, to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets, such measures are to be adopted in accordance with the procedure laid down in Article 41 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4, hereinafter 'Regulation No 1785/81').

2 On 21 December 1994, the Commission adopted Regulation (EC) No 3300/94 laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden (OJ 1994 L 341, p. 39, hereinafter 'Regulation No 3300/94'). The Commission noted, in the third recital in the preamble thereto, that, for the 1994/95 marketing year, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements and that a very large amount of that sugar had been disposed of prior to accession, and that retroactive action on sugar beet delivery contracts concluded in respect of that production between producers and sugar manufacturers had for that reason to be ruled out. Under Article 1 of Regulation No 3300/94, the provisions on the self-financing of the sector set out in Articles 28 and 28a of Regulation No 1785/81 do not apply to the quantities of sugar produced in the new Member States prior to accession. Furthermore, under Article 5(1) of Regulation No 3300/94, a normal carry-over stock for sugar at 1 January 1995 was fixed for each of the new Member States. However, Regulation No 3300/94 does not contain any express rule concerning the application of minimum prices to beet, such as those referred to in Article 5 of Regulation No 1785/81, for beet production in the new Member States prior to their accession.

3 Article 1(1) of Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector (OJ 1993 L 159, p. 94) provides that the minimum sugar beet prices referred to in Article 5 of Regulation No 1785/81 and the production and additional levies referred to in Articles 28 and 28a of that regulation respectively are to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion rates applicable during the marketing year in question. Article 1(3) provides that this specific agricultural conversion rate is to be fixed by the Commission during the month following the end of the marketing year in question.

4 With regard to the marketing year from 1 July 1994 to 30 June 1995, the Commission adopted Regulation (EC) No 1734/95 of 14 July 1995 fixing, for the 1994/95 marketing year, the specific agricultural conversion rate applicable to the minimum sugar beet prices and the production levy and additional levy in the sugar sector (OJ 1995 L 165, p. 12, hereinafter 'the contested regulation'). The specific agricultural conversion rate to be used to convert the minimum sugar beet prices referred to in Article 5 and the levies referred to in Articles 28 and 28a of Regulation No 1785/81 was determined for the currencies of the Member States other than the three new Member States, including Sweden. According to the third recital in the preamble to the contested regulation, the Commission considered that it was not appropriate to lay down specific agricultural conversion rates for the three new Member States on the ground that, for the marketing year in question, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements in force prior to accession and that it had been provided that Articles 28 and 28a would not apply to the quantities of sugar produced in those countries during the 1994/95 marketing year.

5 The first applicant, Sveriges Betodlares Centralförening, is a Swedish association which claims to represent all sugar beet growers in negotiations with the only sugar manufacturer in Sweden. According to Article 4 of its Statutes, it consists of local associations of sugar beet growers. The second applicant, Mr Henrikson, is the President of the applicant association and is also a sugar beet grower.

Procedure and forms of order sought by the parties

6 The applicants seek the annulment, under Article 173 of the EC Treaty, of the contested regulation in so far as it does not fix a specific agricultural conversion rate for Sweden. The application was lodged at the Registry of the Court of First Instance on 16 October 1995.

7 By document lodged at the Court Registry on 5 January 1996, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure. The applicants' observations on the objection of inadmissibility were lodged at the Court Registry on 27 February 1996.

8 On 29 March 1996, the Kingdom of Sweden applied for leave to intervene in support of the forms of order sought by the Commission. The Commission and the applicants lodged their observations on this application at the Court Registry on 3 May 1996 and 15 May 1996 respectively.

9 The applicants claim that the Court should:

— annul the contested regulation in so far as it refuses to fix, for the 1994/95 marketing year, the specific agricultural conversion rate also with regard to Sweden, for the period from 1 January 1995, the date of accession, to 30 June 1995;

— order the Commission to bear the costs.

10 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants jointly and severally to pay the costs.

Law

Admissibility

Arguments of the parties

11 The Commission first submits that the applicants have no interest in challenging the contested regulation, which does not apply to them since it does not fix any specific agricultural conversion rate for Sweden and does not apply to sugar produced under national arrangements in force in Sweden prior to 1 January 1995. It claims that the application is for that reason clearly inadmissible.

12 The Commission argues, secondly, that the applicants are in fact complaining of a failure to act on the part of the Commission. It points out that an application for failure to act can be brought only under Article 175 of the Treaty. The Commission takes the view that this form of action is not open to the applicants and that they are therefore attempting to obtain the same result by a different form of action. In those circumstances, the legal basis of the application is incorrect and the application is for that reason clearly inadmissible.

13 The third plea in support of inadmissibility raised by the Commission is founded on the contention that the applicants lack *locus standi* to challenge a regulation that is general in its scope. According to the Commission, the contested regulation contains measures of general application which apply to objectively determined situations and produce legal effects *vis-à-vis* classes of persons envisaged in a general and abstract manner, namely growers within the sugar sector. It points out that the legislative nature of a measure cannot be called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at any given time, so long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (Case T-472/93 *Campo Ebro and Others* v

Council [1995] ECR II-421, paragraph 32; Case C-298/89 *Government of Gibraltar* v *Council* [1993] ECR I-3605, paragraphs 15 to 17; Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, paragraphs 6 to 9; Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I-3177, paragraph 17). Even if it could be said that the regulation affected the applicants' legal position at all, they could, according to the Commission, be affected only in their objective capacity as growers in the same way as any other grower in the sugar sector. The Commission refers to various applications seeking the annulment of regulations in the sugar sector which were dismissed as inadmissible on the ground that the applicants were affected solely in their objective capacity of seller, producer or refinery (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at p. 415; Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* [1977] ECR 797, paragraph 22; Joined Cases 250/86 and 11/87 *RAR* v *Council and Commission* [1989] ECR 2045; *Campo Ebro*, cited above, paragraphs 34 to 36).

14 The Commission further submits that it follows from well-established case-law that the fact that a legal provision may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined (*Campo Ebro*, cited above, paragraphs 34 to 36).

15 Finally, the Commission takes the view that the applicants are not directly concerned by the contested regulation since it did not fix any conversion rate directly applicable in Sweden.

16 The applicants contend that the application is admissible. They submit that the question whether they have an interest in taking action against the contested regulation relates to the substance of the application, not to its admissibility. They take the view that the contested regulation does produce legal effects for them since, if it had laid down a conversion rate for the Swedish currency, that would have been directly applicable to the applicants' activities, with the result that Swedish sugar beet growers would have been entitled to receive a price calculated in accordance with the conversion rate for that portion of their sugar beet grown in 1994 and corresponding to the normal stocks of sugar as of 1 January 1995, determined by

Regulation No 3300/94. They add that, since the Accession Treaty rendering Community legislation relating to the sugar market applicable in Sweden with effect from 1 January 1995 had been signed well before the first sale of 1994 sugar beet to the Swedish sugar manufacturer, the growers were confident that, following accession, that legislation would be applied to their activities.

17 The applicants contend that there were nine consecutive devaluations of the Swedish krona between 1 January 1995 and 30 June 1995, which affected the parity between the ecu and the Swedish currency. They point out that the intervention price for sugar is determined in ecus and that, when the intervention price remained unchanged, its counter-value in Swedish currency increased. The prices obtained by Swedish sugar manufacturers thus increased without that increase being shared by the sugar beet growers.

18 The applicants further argue on this point that the conversion rate is always determined at the end of the marketing year. Consequently, it always applies to facts situated entirely in the past. The dates of the sale and delivery of the sugar beet are irrelevant with regard to the need for and applicability of a specific agricultural conversion rate.

19 Concerning the second plea in support of inadmissibility relating to an incorrect legal basis, the applicants submit that the Commission did not fail to act with regard to Sweden. In view of the preamble to the contested regulation, the Commission explicitly and definitively decided not to fix a conversion rate for Sweden. In those circumstances, an application for annulment is possible.

20 In reply to the third plea in support of inadmissibility, based on lack of *locus standi*, the applicants submit that the contested regulation, by its very nature, applies only to a limited number of persons, namely growers in the sugar sector, who in fact sold and delivered sugar beet during the marketing year in question. The applicants stress that the number and identity of those persons could not be modified after the contested regulation had been adopted. In that connection, they

refer in particular to the judgment in Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 17 to 22. Relying on the Opinion of Advocate General Reischl in *Koninklijke Scholten Honig* v *Council and Commission*, cited above, at p. 811, they add that the number of persons affected by the contested measure is irrelevant. According to the applicants, the present case in fact involves a bundle of individual decisions adopted under the guise of a regulation which are of individual concern to them.

21 Finally, the applicants contend that there can be no doubt that the measure in question is of direct concern to them. They put forward, *inter alia*, the same reasons as those justifying their interest in acting. Moreover, they submit, no implementing measures are necessary.

Findings of the Court

22 Under Article 114 of the Rules of Procedure, the Court may, where a party so requests, rule on the issue of inadmissibility without considering the substance of the case. In the present case, the Court finds that it has sufficient information from the documents on the file to enable it to rule on the request without opening the oral procedure and without considering the substance of the case.

23 The Court considers that it is necessary to begin by examining the third plea in support of inadmissibility based on the applicants' lack of *locus standi*. Under the fourth paragraph of Article 173 of the EC Treaty, any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former. The Commission contests not only the claim that the applicants are individually concerned but also the claim that they are directly concerned.

24 It is first necessary to establish the nature of the contested measure in order to determine whether it is a regulation laying down rules or a measure which appears to be general and abstract in its scope but which applies only to a limited number of individuals identified at the time when the measure was adopted and which in fact constitutes a bundle of individual decisions adopted under the guise of a legislative measure general in its scope.

25 In the judgment in *International Fruit Company*, cited above, to which the applicants refer in support of their argument that they are affected by a bundle of individual decisions, the legality of a Commission regulation was in issue. As it took the view that, when the regulation was adopted, the number of applications for import licences capable of being affected by it was known, that no further applications could be added to that number and that the regulation had been adopted after account had been taken of the total quantity for which applications had been lodged, the Court of Justice held that the contested provision was not general in its scope but constituted a bundle of individual decisions, each affecting the legal position of each of the persons applying for a licence and therefore of individual concern to the applicants. The regulation had been adopted with regard to the specific situation of certain interested parties.

26 In the present case, the Commission did not receive any request pursuant to which the contested regulation was adopted. For that reason, contrary to what the applicants assert, the present case cannot be treated as analogous to that relied on by the applicants and thus permitting the conclusion that the contested regulation constitutes a bundle of individual decisions.

27 In any event, the Court takes the view that in the present case the regulation fixing the specific agricultural conversion rate in the sugar sector for the 1994/95 marketing year is, by its very nature, of general application within the meaning of Article 189 of the Treaty. It applies by reason of an objective situation and produces legal effects *vis-à-vis* categories of persons considered in a general and abstract manner. Admittedly, no specific agricultural conversion rate was fixed for sales of sugar beet during that marketing year by growers established in Austria, Finland and

Sweden, the Member States which acceded to the European Union on 1 January 1995, a date in the middle of that marketing year. However, the fact that no conversion rate was fixed was justified in the contested regulation in an objective and uniform manner for those three countries, without taking account of the specific situation of certain growers in those countries.

28 Even if it is true that the number and identity of the traders concerned might in theory have been known to the Commission at the time when the contested regulation was adopted, that is not sufficient, according to settled case-law, to call into question its legislative nature, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see, most recently, Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 65).

29 Furthermore, even if it is true that there were nine currency devaluations in Sweden during the first six months of 1995, whereas the monetary situation in Austria and Finland was more stable, this economic factor does not suffice for a Swedish sugar beet grower to be concerned in a manner different from Austrian and Finnish growers. It follows from the case-law that the fact that a legal provision may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined (*Campo Ebro*, cited above, paragraph 36).

30 It follows that the contested regulation is general in its application.

31 Next, even if the regulation proves to be a general and abstract measure, it follows from the case-law that the fact that the contested measure is of a legislative nature does not prevent it from being of individual concern to certain of the traders concerned (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853,

paragraph 19). In particular, it has been held that where the Commission is, by virtue of specific provisions, under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact distinguishes them individually (*Antillean Rice Mills*, cited above, paragraph 67).

32 Thus, if the Commission had in this case such an obligation towards the applicant Mr Henrikson and if the contested regulation adversely affected specific rights of the applicant Mr Henrikson (see order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 43, which interprets the above judgment in *Codorniu*), the admissibility of the action would not be precluded by the fact that the regulation in this case is of general application. The parties have not referred to any existing obligation, imposed on the Commission by a specific provision, to take account of the consequences of the contested regulation on the situation of the applicants, and an analysis of the rules applicable does not reveal any such obligation either.

33 It follows that the contested regulation cannot be regarded as being of individual concern to certain of the traders concerned.

34 It follows from all of the foregoing that the applicant Mr Henrikson cannot be regarded as being affected in his legal position by reason of circumstances in which he is differentiated from all other persons and is distinguished individually just as in the case of an addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107). While it is true that the regulation affects Mr Henrikson's legal position, he is concerned only in his objective capacity as a grower within the sugar sector in the same way as any other grower in that sector. Mr Henrikson's application must for that reason be declared inadmissible.

35 With regard to the admissibility of an action brought by an association, the Court has already held that the defence of common interests is not enough to establish the admissibility of an action for annulment brought by an association. An association is therefore not entitled to bring an action for annulment where its members may not do so individually (Joined Cases T-447/93, T-448/93 and T-449/93

AITEC and Others v *Commission* [1995] ECR II-1971, paragraph 54, and Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraph 59).

36 It has not been established that any of the growers belonging to the local associations which are members of the applicant association are individually concerned by the contested regulation. No reference has been made in the documents to individual growers other than Mr Henrikson, who is not individually concerned by the contested regulation.

37 In the circumstances of the present case, the action brought by the applicant association must also be regarded as being inadmissible.

38 The question whether the applicants are directly concerned by the contested regulation is consequently irrelevant.

39 In view of the fact that the condition of admissibility requiring that the individual applicant and the applicant association be individually concerned by the contested measure has not been satisfied in this case, the Commission's third plea in support of inadmissibility must be upheld and the application dismissed as inadmissible in its entirety, without its being necessary to rule on the other two pleas in support of inadmissibility.

40 In those circumstances, there is no further need to rule on the application by the Kingdom of Sweden for leave to intervene in support of the forms of order sought by the Commission.

Costs

41 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs.

42 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which have intervened in proceedings are to bear their own costs. In the event that the Kingdom of Sweden has incurred costs in its application for leave to intervene in this case, it must bear those costs itself.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. There is no need to rule on the application for leave to intervene brought by the Kingdom of Sweden.

3. The applicants shall bear their own costs and shall also bear, jointly and severally, those incurred by the Commission. The Kingdom of Sweden shall bear the costs which it has incurred in bringing its application for leave to intervene.

Luxembourg, 4 October 1996.

H. Jung — A. Saggio

Registrar — President